IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3675 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SIDDHPUR TALUKA PANCHAYAT & 3 - Petitioner(s)

Versus

STATE OF GUJARAT & 9 - Respondent(s)

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Appearance :

MR SK JHAVERI for Petitioner(s) : 1,(MR KS JHAVERI) for Petitioner(s) : 2,
MR SIRAJ GORI, AGP for Respondent(s) : 1,
MR HS MUNSHAW for Respondent(s) : 2,
DS AFF.NOT FILED (R) for Respondent(s) : 3,
MS SK VISHEN for Respondent(s) : 4 - 10.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 15/11/2005

ORAL JUDGMENT

In the present petition, the petitioner Sidhpur Taluka Panchayat has challenged the legality of the order

dated 28th March 2002 passed by the District Development Officer, Patan. By the impugned order, the District Development Officer was pleased to stay the execution and operation of resolution No.32 passed by the Panchayat in its special general meeting dated 26th March, 2002. This order was passed in the purported exercise of power under section 249(4) of the Gujarat Panchayats Act 1993 since the Authority was of the opinion that the resolution was not in conformity with the provisions of section 128 of the said Act. The resolution in question pertained to the adoption of budgetary sanctions for the year 2001-02 in its modified form and approving the estimate for the budget of the year 2002-03. The Authority was of the view that the resolution was adopted by majority of the members present and voting a and the same was not passed by two-third majority as required under the law.

2. While issuing notice on 2nd April 2002, this Court granted stay against the implementation of the said order. Eventually, while admitting the petition on 7.5.2002, ad-interim relief granted earlier was ordered to continue till final disposal of the petition.

3. It can thus be seen that during the pendency of the

petition, the impugned order passed by the District Development Officer remained stayed. The resolution passed by the Panchayat adopting the budget in its revised form was therefore allowed to operate. Learned advocate Shri Munshaw appearing for respondent No.2 submitted that by virtue of stay granted by this Court, on account of afflux of time and on account of new body of the panchayat having been installed through fresh elections, the petition has become infructuous. He submitted that under the interim order passed by this Court, the Panchayat was allowed to act upon the resolution and budget passed thereunder. Learned AGP Shri Gori appearing for respondent No.1 also made similar submissions.

4. In view of the submissions made, it would appear that by virtue of the stay granted by this Court, the Panchayat was allowed to incur expenditure according to the budget approved in its resolution No.32 passed in the meeting dated 26.3.2002. Much time has passed since then. New elected body has also been installed through elections. It would not, therefore, be proper to reopen the issues and to reexamine the legality of the order passed by the District Development Officer. By

combination of facts noted above, the petition has become infructuous and the same is disposed of as such. It would not be open for the respondents to act on the impugned order and to reopen the question of expenditure incurred by the Panchayat under its resolution NO.32 which was allowed to operate by this Court by way of interim measure.

5. Subject to the above observations, the petition is disposed of. Rule is discharged.

(Akil Kureshi, J.)

(vjn)